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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,697	05/24/2004	Kenneth William Austin	03292.101850.	3696
66569 7590 10/28/2009 FITZPATRICK CELLA (AMEX) 1290 Avenue of the Americas NEW YORK, NY 10104-3800				
EXAMINER				
TROTTER, SCOTT S				
ART UNIT		PAPER NUMBER		
3694				
MAIL DATE		DELIVERY MODE		
10/28/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/709,697

**Applicant(s)**

AUSTIN ET AL.

**Examiner**

SCOTT S. TROTTER

**Art Unit**

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to the amendment received July 16, 2009. This action is **Final**.

#### ***Response to Arguments***

2. Thank you for the clarification of what is meant by "table driven logic" it appears to be structure in a method claim and therefore not entitled to patentable weight under *Ex parte Pfeiffer*, 135 USPQ 31 (BdPatApp&Int 1961) "As to the rejection of the claims on the prior art references, we do not agree with the appellant that such structural limitations as are not disclosed by the references should be given patentable weight. This argument is applicable to claims drawn to structure and not claims drawn to a method. To be entitled to such weight in method claims, the recited structural limitations therein must affect the method in a manipulative sense and not to amount to the mere claiming of a use of a particular structure, which, in our opinion, is the case here." Since the antecedent basis problem was also corrected the 112 2<sup>nd</sup> rejections are withdrawn.

3. As for the 101 rejection it is being withdrawn.

4. As for applicant's argument that Lee teaches away from the invention because it points out that there is a cost in some customers making legitimate purchases getting annoyed and not completing the purchase. That does not make it impossible for the invention to work it is simply pointing that these measures to reduce fraud will also cost

some sales. Whether the tradeoff is worth it is a business decision rather than a reason to never request more information because it could cost some sales.

5. Applicant's arguments were considered but were not persuasive.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Patent 7,263,506 B2) in view of Penzias (U.S. Patent 5,311,594).

As per claims 1 and 7 Lee teaches scoring the likelihood of fraud in a transaction based on the data available about the transaction which is related to the customer because they selected what to buy and where to send it. (*see Lee column 4 lines 50 – column 5 line 38*) This is done using multiple statistical models based on the type of transaction involved which is selectively evaluating a first set of criteria and then selectively evaluating a second set of criteria. If there is considered too high a likelihood of fraud a web page requesting further information from the customer can be generated. (*see Lee column 8 lines 6-7*) While Lee does not specify what further information should be requested Penzias teaches requesting information to confirm a card holder's identity by asking selectively asking one of several questions that the

customer would know the answer to confirm identity. (*see Penzias abstract*) This is overriding a denial that would otherwise have been issued. Therefore it would have been obvious to request further information to confirm the identity of the cardholder using known methods to achieve an expected result.

As per claim 2 Lee teaches the purchase of goods and services over the Internet. (*see Lee column 1 lines 23-28*)

As per claims 3 and 8 Penzias teaches the information being stored to confirm identity includes address and telephone number information. (*see Penzias column 4 lines 7-21* The information is being used as a password even if it is not called such.) Therefore it would have been obvious to a user of ordinary skill in the art at the time the invention was made to use such information as passwords.

As per claims 5 and 9 Lee teaches using a score to authorize a transaction and Penzias teaches using a properly answered question to authorize a transaction. Therefore it would have been obvious to request further information to confirm the identity of the cardholder using known methods to achieve an expected result.

As per claim 6 it is a parallel system claim to method claim 1 and is rejected under the same rationale as claim 1.

As per claim 10 completing a purchase changes the financial information related to said transaction card account.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication from the examiner should be directed to Scott S. Trotter, whose telephone number is 571-272-7366. The examiner can normally be reached on 8:30 AM – 5:00 PM, M-F.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell, can be reached on 571-272-6712.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12. The fax phone number for the organization where this application or proceeding is assigned are as follows:

(571) 273-8300 (Official Communications; including After Final  
Communications labeled "BOX AF")

Art Unit: 3694

(571) 273-6705 (Draft Communications)

sst

10/27/2009

/James P Trammell/

Supervisory Patent Examiner, Art Unit 3694